agent.

Claims 1, 2 and 4-25 are pending; claim 3 being canceled by this amendment.

Claims 1-8 and 15 stand provisionally rejected for obviousness-type double patenting over copending application serial no. 09/807,094. The accompanying Terminal Disclaimer obviates this rejection, and the rejection should be withdrawn.

Claims 1-16 stand rejected under 35 U.S.C. 112, first paragraph for reciting 3000 ppm of nano-scale nucleating agent whereas the Examiner reads the specification as providing support for only 2000 ppm. The claims have now been corrected to recite 2000 ppm, and the rejection should accordingly now be withdrawn.

Claim 3 stands rejected under 35 U.S.C. 112, second paragraph because the Examiner finds the claim unclear with respect to the properties of the particles. This claim has now been canceled, and the limitations that were recited in this claim have been added to Claim 1. In this regard, the Examiner will note that, at the same time the limitations of claim 3 were added to claim 1, the language reciting said limitation has been clarified to more concisely describe that limitation consistently with the meaning that the Examiner originally presumed. The rejection of claim 3 under 35 U.S.C. 112, second paragraph, should accordingly now be withdrawn.

The Examiner notes (but makes no rejection or objection) that claim 9 recites the

limitation "...(II), (III), (IV), and/or (V)..." which he sees as lacking antecedent support. The claim has now been amended to refer back to independent claims which provide the necessary antecedent support.

Claim 2 is viewed by the Examiner as being in improper Markush form. This has now been corrected.

Claim 16 has been amended to proper method form, thereby obviating the Examiner's comments in paragraph 10 of the Office Action, and the rejection of said claim under 35 U.S.C. 101 as well. This rejection should therefore now be withdrawn.

Turning now to the art rejections, claims 1-8 and 15-16 stand rejected under 35 U.S.C. 102(e) as anticipated by copending Application No. 09/807,094. The present application has an effective filing date of October 4, 1999, which is the filing date of the International Application. This filing date antedates the date that copending Application No. 09/807,094 became available as a reference under 35 U.S.C. 102(e). Accordingly, this rejection is not proper and should be withdrawn. In the event the Examiner reaches a different legal conclusion, it is respectfully requested that the Examiner provide an explanation of the legal theory he relies on.

Claims 1-4, 10 and 12-16 stand rejected under 35 U.S.C. 103(a) as obvious over Khanna in view of Mizutani.

The Examiner views Khanna as disclosing a polyamide polymer which includes a small amount of silica nucleating agent, and the Examiner ***speculates*** that this silica nucleating agent has diameters less than 100 nm. However, neither Khanna nor Mizutani teach or suggest anything at all about a polyamide having nano-scale particles wherein the particles have, as a number-weighted average, a dimension no greater than 100 nm in at least one direction that is randomly selectable. The Examiner contends that Mizutani et al discloses montmorillonite, which he says has the aspect ratio that Applicants claim in Claim 3. The Examiner does not, however provide any evidence of such disclosure, and Applicants have not been able to find such a disclosure in either of the references. Where does the Examiner see anything at all about nano-scale particles having a dimension no greater than 100 nm and an aspect ratio of 10? The answer is: Nowhere!

Moreover, it must be recognized that Mizutani is concerned with a completely different kind of polymer than that of Applicants layer (I). Note that Mizutani is concerned with a ***polyarylene sulfide.***

Applicants layer (i) is polyamide.

Khanna is concerned with a synthetic linear polyamide.

Thus, there is no basis upon which Khanna and Mizutani would or could be combined. Even if these two references were ***forced*** together, such as by hindsight reconstruction, they still would not lead to Applicants' invention, for the reasons given

above.

The rejection of claims 1-4, 10 and 12-16 under 35 U.S.C. 103(a) as obvious over Khanna in view of Mizutani should accordingly now be withdrawn.

Claims 1-9 and 11-16 stand rejected under 35 U.S.C. 103(a) as obvious over Ramesh in view of the combined teachings of Khanna and Mizutani.

The Examiner acknowledges that Ramesh does not teach the inclusion of nucleating agents, and relies on Khanna and Mizutani to fill the gap. As discussed above, the Khanna/Mizutani cannot be combined, but even if they were, such a combination would neither teach nor suggest the special nucleating agents recited in Applicants claims.

The references cited cannot therefore in any way be seen as rendering Applicants claims obvious, and the rejection of claims claims 1-9 and 11-16 under 35 U.S.C. 103(a) as obvious over Ramesh in view of Khanna and Mizutani should accordingly now be withdrawn.

In view of the present remarks it is believed that claims 1,2 and 4-25 are now in condition for allowance. Reconsideration of said claims by the Examiner is respectfully requested and the allowance thereof is courteously solicited.

CONDITIONAL PETITION FOR EXTENSION OF TIME

If any extension of time for this response is required, Appellants request that this be considered a petition therefor. Please charge the required petition fee to Deposit Account No. 14-1263.

ADDITIONAL FEE

Please charge any insufficiency of fee or credit any excess to Deposit Account No. 14-1263.

OFFICIAL

Respectfully submitted,
NORRIS, McLAUGHLIN & MARCUS

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I hereby certify that this correspondence is being transmitted via facsimile addressed to Hon. Assistant Commissioner For Patents, Washington, D.C. 20231 on December 6, 2002

_____
William C. Gerstenzang

Date: December 6, 2002

MARKED-UP COPIES OF AMENDED CLAIMS SHOWING CHANGES RELATIVE TO PREVIOUS VERSIONS

Claim 1 (Amended). Single- or multi-layer film having at least one layer (l) of a polyamide with nano-scale nucleating particles dispersed therein, [characterised in that] **wherein** [the smallest particle constituents forming a rigid unit in the dispersion] **said nano-scale nucleating particles** have **an aspect ratio of at least 10 in two randomly selectable direction, and,** as a number-weighted average [of all the constituents], a dimension no greater than 100 nm in at least one direction that is randomly selectable for each constituent, [when the layer (l) is cooled from its fully molten state at a cooling rate of from 10° to 20°C per minute,] **having** crystalline structures that emanate from the surface of the particles [are] formed **as a result of the layer having been cooled from a fully molten state**, the amount by weight of the particles, based on the total weight of the polyamide forming the layer (l), is from 10 ppm to [3000] **2000** ppm, the polyamide forming the layer (l) contains at least 90 % polyamide 6, based on the total mass of the polyamide in that layer.

Claim 2 (twice amended). The film of Claim 1 wherein layer (l) contains, in addition to polyamide 6, a polyamide selected from the group consisting of [polyamide 6], polyamide 10, polyamide 12, polyamide 66, polyamide 610, polyamide 6I, polyamide 612, polyamide 6/66, polyamide 6I/6T, polyamide MXD6, polyamide 6/6I, polyamide 6/6T, polyamide 6/IPDI, copolymers of the monomers forming these polymers, [or mixtures of those polymers or copolymers] **and mixtures thereof**.

Claim 3. Please cancel.

Claim 9 (twice amended). The film of [Claim 1] **any one of the preceding claims** [wherein said film contains, in addition to the layers (I) and optionally (II), (III), (IV) and/or (V),] **further comprising** one or more further polymeric layers.

Claim 16 (twice amended). A method of [using the film of Claim 1 in the] packaging [of] foodstuffs on [shape-fill-seal machines] **a form-fill-seal machine, which comprises packaging said foodstuffs on said form-fill-seal-machine with a single- or multi-layer film of Claim 1**.